

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:08-CR-174-FL-1
No. 5:13-CV-629-FL

KENDRICUS MARQUELL WILLIAMS,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

ORDER

This matter is before the court on petitioner's motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct sentence (DE 198, 202). The government has filed a motion to dismiss (DE 204), to which petitioner has not responded. Instead, the court has received notice through the clerk's office that petitioner has contacted the clerk's office by telephone seeking to withdraw his motion. It appears that petitioner seeks a voluntary dismissal of this action pursuant to Federal Rule of Civil Procedure 41(a). Motions by telephone, however, are not allowed under the rules. See Fed. R. Civ. P. 7(b). Because the government has responded to petitioner's petition, this habeas action may only be voluntarily dismissed pursuant to Rule 41(a)(2), which permits voluntary dismissal without prejudice "on terms that the court considers proper." Accordingly, the court DIRECTS petitioner to respond to this court's order and state in writing whether he wishes to voluntarily dismiss this action. Petitioner must respond to this court's order within twenty-one (21) days. If petitioner fails to respond, the court will take up and decide the government's motion to dismiss and dismiss the action with prejudice for the reasons stated in that motion.

SO ORDERED, this 19th day of February, 2014.



LOUISE W. FLANAGAN
United States District Judge